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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. [redacted] 52

PRUDENCE-BONDS CORPORATION (New Corporation),

Petitioner,

—v.—

SAMUEL SILBIGER, *et al.*

BRIEF OF RESPONDENT ARTHUR MILLER IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ARTHUR MILLER
Respondent, Pro Se

LESTER H. MARKS
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 785

PRUDENCE-BONDS CORPORATION (New Corporation),

Petitioner,

—v.—

SAMUEL SILBIGER, *et al.*

BRIEF OF RESPONDENT ARTHUR MILLER IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Opinions Below

The opinion of the Court of Appeals for the Second Circuit, dated March 7, 1950 (R. 755) is not yet reported. The opinion of the United States District Court for the Eastern District of New York, dated July 25, 1949 (R. 318) is not reported.

Jurisdiction

Petitioner invokes the jurisdiction of this Court pursuant to section 240(a) of the Judicial Code, as amended, 28 U. S. C. 347 (a) and section 24(c) of the Bankruptcy Act, as amended, 11 U. S. C. 47(c).

Statement

This respondent deems necessary a further statement of the case than that submitted by petitioner, both to correct inaccuracies and to furnish additional fact.

Although all of the awards to counsel which were made in this matter were directed to be paid out of the funds of Series AA, Fifth, Sixth, Eighth, Ninth, Twelfth, Seventeenth and Eighteenth of Prudence bonds, Mr. Miller appeared only in the construction proceeding pertaining to the Fifth Series and applied for an allowance only out of the funds thereof (R. 10, 11, 70). The Fifth Series proceeding, which involved substantial issues of law governing all of the series, was instituted by an order to show cause dated August 3, 1945, based on a petition verified August 2, 1945, and was returnable September 4, 1945. Mr. Miller's first appearance was by affidavit sworn to on August 31, 1945 (R. 122, 123, 622, 623).

The Special Master herein found on undisputed evidence that in the "construction proceeding" Mr. Miller was the first to contend that, in addition to payment of the principal amount of their bonds, the Fifth Series public bondholders were entitled to interest thereon at the 5½% rate to date of payment and that the collateral of the Fifth Series should be applied thereto before being applied to any of the subordinate purposes (R. 183, 268). The construction proceedings were lengthy and difficult. Mr. Miller's services, which were onerous and protracted, are mentioned by the Special Master in his report and findings and may be found in detail in Mr. Miller's direct testimony thereon (R. 183, 184, 267-270, 735-743).

The Special Master specifically found that Mr. Miller "performed his duties with fidelity and rendered legal services of the highest calibre" (R. 270).

The results accomplished by counsel for the public bondholders in the "construction proceedings" were substantial. As a result of their efforts $1,994,453.79 was preserved for the public bondholders in various series which, without their efforts, would have been diverted to others (R. 168, 169, 247). A great part of it would have passed to subordinate lienors other than public bondholders of other series. Using the figures given by petitioner itself in its brief in the Court of Appeals (page 16) we find that $173,949.98 would have been paid to Bank of Manhattan on its subordinate liens, $1,009,886.22 to Prudence Realization Corporation and $810,637.59 to bondholders in other series.

No claim is made here, nor was it made in the Court of Appeals, that any conflict of interest existed so far as Mr. Miller is personally concerned. It is not claimed that he personally bought or sold Prudence securities or that he personally had any interest in any way adverse to the interests of the Fifth Series public bondholders. Petitioner claims, however, that Mr. Miller's clients dealt actively in Prundence bonds (Pet. pp. 3, 4, 10, 11, 19-21) and for that reason his allowance should be forfeited.

In his affidavit of August 31, 1945, Mr. Miller specified the persons for whom he appeared (R. 611). At the hearing before the Special Master herein he added the names of two other persons (R. 553, 554). Petitioner would give the unwarranted impression that Mr. Miller's clients were a group or syndicate united in interest so far as their investments in the Prudence bonds were concerned. That impression finds no basis in the record. The record fails to show other than that each acted for himself or herself alone. Their only common characteristic was that Mr. Miller was their attorney.

Unquestionably, some of them did no buying or selling whatever (R. 155, 620, 621). One acquired bonds by inheri-

tance (R. 708-711). Others, in the regular course of their business as securities brokers bought and sold some of the bonds (R. 587, 613-618, 620). Thus viewed as the activities of individuals, the buying and selling complained of by petitioner take on an entirely different aspect.

On the basis of all the facts it is submitted that no grounds are shown for granting a writ of certiorari against respondent Miller.

Respondent's Contentions

The respondent Arthur Miller makes the following contentions:

1. With respect to his application for a counsel fee herein section 249 of the Bankruptcy Act imposes only a personal obligation upon the respondent. It does not preclude the allowance to him by reason of the activities of some of the individual clients for whom he appeared.

2. Even had his right to the award depended upon the activities of his clients, their conduct was not such as would bar a recovery.

3. Respondent's services aided in establishing a fund for the benefit of an entire class of bondholders and his right to compensation out of that fund is not forfeited by reason of the fact that he was retained by and appeared in the proceeding on behalf of individual bondholders. Actually, the public bondholders would have been entirely precluded from representing their class in the proceeding unless as individuals they could appear therein by counsel.

4. No question is presented as to Mr. Miller warranting a review by this Court.

Respondent's Argument

I

Section 249 of the Bankruptcy Act does not bar the allowance made herein to respondent Arthur Miller. Petitioner complains of the activities of some of Mr. Miller's *clients*. There is no claim that Mr. Miller *personally* bought or sold Prudence securities. It is also not claimed that Mr. Miller's clients bought or sold for his benefit or account. In fact it is not even claimed that he was aware of their transactions.

The provision with respect to forfeitures of allowances by reason of transactions in securities, it will be noted, clearly specifies the separate and distinct classes of persons affected, one of them being attorneys. If it had been intended to hold an attorney personally liable for the acts of his clients, Congress would have so provided by apt language. That the statutory intent was to impose forfeiture only for the individual's own acts becomes even more clear when both sentences of section 249 are read together.

Petitioner's entire claim to *certiorari* against the respondent Miller is based on an attempt to broaden the application of section 249 of the Bankruptcy Act. That section is clearly a statute imposing a penalty. Consequently, it is elementary that it must be strictly construed. It certainly ought not, therefore, be held to impose vicariously upon individuals, liability for the acts of others, especially where its plain language is to the contrary.

The provision has been so construed. Thus in *In re Mortgage Guarantee Co.*, 40 Fed. Supp. 226, 237, 238, an attorney was awarded compensation by the court, although the very client for whom he appeared was denied com-

pensation by reason of transactions in the securities. In the case of *In re Midland United Co.,* 64 Fed. Supp. 399, aff'd. 159 F. 2d 340 (cited by petitioner) the chairman of a committee, one Lindley, was barred from recovering compensation because of his trading in the stock concerned, but neither the attorneys for the committee nor its other members were denied allowances. Similar cases are *In re Republic Gas Corp.,* 35 Fed. Supp. 300, and *In re Paramount Publix Corp.,* 12 Fed. Supp. 823, both cases cited by petitioner in the Court of Appeals. In both, individual committee members were denied compensation, on account of trading in the securities, but the other members of the committees who had not done so were compensated.

On this point the Court of Appeals in the instant case said:

> "The section does not expressly impute any fault to the attorney for his client's misconduct—assuming that that is not too strong a word. It only declares what his own disability shall be, if on his own account he buys and sells. To charge him with his client's dealings would compel him, at the risk of losing all his labor, either to keep an eye upon those dealings (which in practice would be so irritating as to imperil the continuance of their relations); or blindly to put any right to be paid at his client's mercy" (R. 763).

As specified in sections 241-244 of the Bankruptcy Act, allowances to attorneys in reorganization proceedings are made to them directly and not indirectly by way of an expense to the parties for whom they appeared, as was previously the practice in bankruptcy. The limitation of the requirement of section 249 with respect to forfeiture of an attorney's allowance only for his own personal trans-

actions and not for those of his clients is, therefore, consistent with the general provision of the law for compensation to attorneys.

The present law follows the equity rule, which, at least as far back as *Central Railroad* v. *Pettus,* 113 U. S. 116, 124-127, decided in 1885, permitted the attorney in a class action to apply directly for his fee. In fact, it seems to be implicit in that case that the attorney's right to an allowance does not necessarily depend upon whether or not the client could have claimed the amount as an expense in the first instance. It can readily be seen that the conduct of a stockholder or creditor who might have a minute interest in the result of a class action ought not to prejudice the right to recovery of an attorney whose services have resulted in obtaining a large fund for a class of many members, when the attorney himself has acted with complete propriety and diligence.

Petitioner nevertheless contends that the attorney's fee should be treated as though it were an expense of the party for whom he appeared and determined accordingly, citing *Young* v. *Potts,* 161 F. 2d 597, 600 and *Teasdale* v. *Sefton National Fibre Can Co.,* 85 F. 2d 379, 382. Neither case is in point. In *Young* v. *Potts,* the client, not the attorney, sought to be allowed an amount that he claimed he had actually expended for counsel fees. It was denied to him by reason of his own positive wrongdoing, pointed out by this Court in *Young* v. *Higbee Co.,* 324 U. S. 204, a prior decision in the same case. In the *Teasdale* case the court denied an allowance for the reason that it found that counsels' services had benefited only their own individual client and not the class as a whole. In the present case, of course, it is not even disputed, that Mr. Miller's efforts aided in establishing a very substantial fund for a definite class.

II

Not only is the attorney not held responsible for the activities of his clients under the provisions of section 249 of the Bankruptcy Act but, we submit, the activities of Mr. Miller's clients were not such as would have barred allowances, even to them, had they been the applicants instead of him.

The record is clear that three of Mr. Miller's clients did no buying or selling whatsoever (R. 155, 620, 621). Two did no buying during the period of the construction proceeding and sold no Fifth Series bonds, in which series alone Mr. Miller appeared, and such selling of other series as they did would come under the *de minimis* rule (*In re Midland United Co.*, 64 Fed. Supp. 399, 417) (R. 618, 619). One did not sell any of his Prudence bonds of any series. He did not buy any of the Fifth Series. (Bonds of that series which were transferred to him he either inherited or took as nominee of Adeson Corporation. He also inherited some bonds of other series.) There is no indication whatever that his acquisition of bonds of other series in addition to those he inherited either affected or were in any way affected by the litigation (R. 155, 708, 711).

Some of Mr. Miller's clients were connected with the securities business (R. 587), but there was no evidence justifying the term "speculators" with respect to them (petition, pp. 12, 20). In fact their transactions were quite obviously in the regular course of their business. That was their means of livelihood, just as sales of goods by a merchant are his. Trading by a broker in the regular course of his business is not the type of transaction proscribed by section 249 of the Bankruptcy Act (*In re Midland United Co.*, 64 Fed. Supp. 399, 417).

Mr. Miller's clients were neither trustees or agents of other bondholders nor did they constitute a committee. They were individual bondholders who intervened in the proceeding, being obliged to do so to protect their own interests as no one was doing it for them. They acted at their own risk and expense and, if their efforts had not resulted in establishing a fund for the benefit of the class, there would have been no obligation on the part of the others to assist them or to contribute to their expense.

The proceeding in which they intervened was not the reorganization proper. No plan was being considered, in which suggestions and objections would be offered, in which conferences and negotiations would be necessary and personal influences might tend to sway their acts. The "construction proceeding" was, as its name indicated, a purely legal proceeding brought for the interpretation of a plan long in effect. There were submitted for determination only questions of law. Neither Mr. Miller's actions nor the result of the litigation could have been influenced by any of his clients' transactions. The legal points he advocated were unaffected by extraneous considerations.

Even if Mr. Miller's allowance had depended on his clients' activities, it is clear that the latter do not come within the classes proscribed by section 249 of the Bankruptcy Act. His clients acted neither as fiduciaries nor as representatives of others. Several of them, furthermore, did no buying or selling whatever. Since those who did not buy or sell were not united in interest with those who did, there would have been no reason to deny them an allowance, had they themselves been the applicants, even though the attorney who represented them also represented the others. In Point I of this brief cases are cited where individual members of committees were denied compensation because of their transactions in the securities but in

those cases the other members of the committees and the attorneys were not affected. (See *In re Midland United Co.*, 64 Fed. Supp. 399, aff'd. 159 F. 2d 340; *In re Republic Gas Corp.*, 35 Fed. Supp. 300 and *In re Paramount Publix Corp.*, 12 Fed. Supp. 823.) The rule would appear to apply far more strongly in the case of individuals who did not even constitute a committee. Furthermore, even as to those who did buy and sell, as we have previously shown, their transactions also were not such as would have invoked the bar of section 249, had they been the sole applicants for the allowance.

Conceding that persons who, as individuals, prosecute a class action have an obligation to other members of the class, it cannot be held that their duty is coextensive with that of the trustee of an express trust or one who, by his status, assumes true fiduciary liability. This Court has recognized that there are varying degrees of fiduciary duty. (See *Manufacturers Trust Co.* v. *Becker*, 338 U. S. 304, 311, and *Securities and Exchange Commission* v. *Chenery Corporation*, 318 U. S. 80, 85, 86, 88, 89.)

The liability to other members of the class owed by individual litigants prosecuting a class action was considered by this Court in *Young* v. *Higbee Co.*, 324 U. S. 204. In that case parties had literally sold the cause of action of their class to its opponents for their own personal gain. This Court condemned them for so doing. It held that such individual litigants must refrain from deliberate injury to the class rights. That is, however, as far as this Court has extended the obligation of such individual litigants. Other cases on the general subject of the duties of fiduciaries, cited by petitioner, pertain either to trustees of express trusts or, at least, to persons standing in a higher degree of confidence than did Mr. Miller's individual clients.

It should be noted that petitioner in the construction proceeding took a position that Mr. Miller aptly termed "armed neutrality" (R. 331) as against the interests of the public bondholders of the Fifth Series advanced by Mr. Miller and other counsel for individual bondholders. The fact that the interests of such public bondholders were successfully defended against such covert opposition, as well as other active and strenuous opposition, is pragmatic proof in itself that Mr. Miller's clients did nothing to thwart the common cause of their class. The present opposition to his fee cannot, therefore, be based on any claim that either he or his clients were unfaithful to their obligation. The statute in question should therefore not be given a strained construction to accomplish an end opposed to the equities involved.

III

Petitioner contends that respondent Miller may not be awarded an allowance out of the fund of the class for the reason that he represented only the interests of his individual clients and was not bound to the class by fiduciary ties. Concededly, Mr. Miller appeared for his own clients, owners of Fifth Series bonds, in the construction proceeding involving that series. It was, however, impossible for him to advocate his clients' personal cause without at at the same time espousing the cause of their class as a whole. In fact, except for the appearance in the proceeding by counsel for individual bondholders acting on their own behalf, the interests of the class would not have been advocated by anyone. Certainly, therefore, the circumstance that Mr. Miller represented individual clients is not a basis for depriving him of a well earned fee out of the class fund.

Mr. Miller's position was, in fact, analogous to that of the attorneys whose claim to be paid out of a fund for the benefit of a class which their efforts had created was sustained by this Court in *Sprague* v. *Ticonic Bank,* 307 U. S. 161. In that case suit was brought on behalf of the settlor and beneficiary of a trust of which the bank was trustee to have the trust fund declared to be a preferred claim against the bank in receivership. The plaintiffs ultimately prevailed. Only by virtue of the rule of *stare decisis* and not by reason of independent suits by them, several other persons for whom the bank was also trustee under similar trusts, obtained the same preference as did the plaintiffs. The attorneys claimed compensation out of the entire fund which the receiver was obliged to segregate for the benefit of all of these preferred claims. Their right to be so compensated out of the entire fund was sustained by this Court.

Patently, the attorneys in that case owed no direct duty throughout the main litigation to any but the specific clients who had retained them. Likewise, Mr. Miller was not retained by all of the bondholders and, consequently, could press his contentions only on behalf of those who had. Nevertheless, while his direct obligation was to his own clients, all of the others benefited from his services and share equally in the fund thereby established. His right to compensation out of the fund therefore follows the principle of the *Sprague* case implicitly.

Petitioner cites *Dickinson Industrial Site Inc.* v. *Cowan,* 309 U. S. 382; *Brown* v. *Gerdes,* 321 U. S. 178 and *Young* v. *Higbee Co.,* 324 U. S. 204 as authority for his contention to the contrary. The first two cases did not concern the question here at issue and are not in point. In *Young* v. *Higbee Co.,* as we have previously stated, this Court held, merely, that individuals prosecuting a class action must act in good faith to the extent, at least, of refraining from

affirmative injury to the other members of the class. There is no claim that this respondent violated that requirement. Except for the actual wrongdoing there specified, the *Young* case does not preclude the right to an allowance out of a class fund to the attorney for individual litigants whose efforts have helped to create it, although of necessity his immediate retainer was by specific individuals.

IV

So far as the respondent Arthur Miller is concerned, no important question is presented requiring a review by this Court. As we have endeavored to show, on all of the facts in the record herein the allowance to him is amply justified by well established principles of law and equity. As applied to this case the meaning of section 249 of the Bankruptcy Act is entirely clear and the attempt to broaden its application to situations not therein contemplated is not a proper basis to request this Court's review.

The decision herein of the Court of Appeals does not conflict with that of any other circuit, nor with any of the other decided cases on the subject.

CONCLUSION

The petition for certiorari should be denied as to the respondent Arthur Miller.

Respectfully submitted,

ARTHUR MILLER,
Respondent, Pro Se

LESTER H. MARKS,
Counsel for respondent, Arthur Miller.

May 23, 1950.

APPENDIX

Bankruptcy Act, Sec. 241, 11 U. S. C. Sec. 641: The judge may allow reimbursement for proper costs and expenses incurred by the petitioning creditors and reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in a proceeding under this chapter—

(1) by a referee;

(2) by a special master;

(3) by the trustee and other officers, and the attorneys for any of them;

(4) by the attorney for the debtor; and

(5) by the attorney for the petitioning creditors.

Such compensation of referees and trustees shall not be governed by sections 40 and 48 of this Act.

Bankruptcy Act, Sec. 242, 11 U. S. C. Sec. 642: The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in connection with the administration of an estate in a proceeding under this chapter or in connection with a plan approved by the judge, whether or not accepted by creditors and stockholders or finally confirmed by the judge—

(1) by indenture trustees, depositaries, reorganization managers, and committees or representatives of creditors or stockholders;

(2) by any other parties in interest except the Securities and Exchange Commission; and

(3) by the attorneys or agents for any of the foregoing except the Securities and Exchange Commission.

Bankruptcy Act, Sec. 243, 11 U. S. C. Sec. 643: The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred by creditors and stockholders, and the attorneys for any of them, in connection with the submission by them of suggestions for a plan or of proposals in the form of plans, or in connection with objections by them to the confirmation of a plan, or in connection with the administration of the estate. In fixing any such allowances, the judge shall give consideration only to the services which contributed to the plan confirmed or to the refusal of confirmation of a plan, or which were beneficial in the administration of the estate, and to the proper costs and expenses incidental thereto.

Bankruptcy Act, Sec. 244, 11 U. S. C. Sec. 644: Where a petition is filed under section 127 of this Act, the judge may allow, if not already allowed, reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in the pending bankruptcy proceeding—

(1) by a marshal, receiver, or trustee, as provided in subdivision g of section 48 of this Act, and the attorneys for any of them;

~~(2) by the attorney for the petitioning creditors;~~

(3) by the attorney for the bankrupt; and

(4) by any other persons and the attorneys for any of them entitled under this Act to compensation or reimbursement in such bankruptcy proceeding.

Bankruptcy Act, Sec. 249, 11 U. S. C. Sec. 649: Any persons seeking compensation for services rendered or reimbursement for costs and expenses incurred in a proceeding under this chapter shall file with the court a statement under oath showing the claims against, or stock of, the debtor, if any, in which a beneficial interest, direct or in-

direct, has been acquired or transferred by him or for his account, after the commencement of such proceeding. No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the proceedings in a representative or fiduciary capacity, who at any time after assuming to act in such capacity has purchased or sold such claims or stock, or by whom or for whose account such claims or stock have, without the prior consent or subsequent approval of the judge, been otherwise acquired or transferred.

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IN THE

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OCTOBER TERM, 1949

No. [redacted] 52

PRUDENCE BONDS CORPORATION
(NEW CORPORATION),
Petitioner,

against

SAMUEL SILBIGER, *et al.*

MEMORANDUM FOR RESPONDENT SILBIGER ON PETITION FOR WRIT OF CERTIORARI

SAMUEL SILBIGER, *pro se.*
Attorney for Respondent.

SUPREME PRINTING CO., INC., 41 MURRAY STREET, N. Y., BARCLAY 7-0349

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 785

PRUDENCE BONDS CORPORATION (NEW CORPORATION)
Petitioner,

against

SAMUEL SILBIGER, *et al.*

MEMORANDUM FOR RESPONDENT SILBIGER ON PETITION FOR WRIT OF CERTIORARI

Opinions Below

The opinion of the Court of Appeals for the Second Circuit dated March 7, 1950 (R. 755) is not yet reported. The opinion on the petitions for Rehearing, dated April 5, 1950 (R. 785) is not yet reported.

Jurisdiction

The decree of the Court of Appeals was entered on March 7, 1950 (R. 765). The decree denying rehearing was entered April 5, 1950 (R. 786).

Petitioner invokes the jurisdiction of this Court under Section 240 (a) of the Judicial Code, as amended, 28 U. S. C. 347 (a), and Section 24 (c) of the Bankruptcy Act, as amended, 11 U. S. C. Sec. 47 (c).

Petitioner's Questions

So far as the issues relating to respondent Silbiger is concerned, they may be summarized as follows:

On the premise that Silbiger represented conflicting interests and violated the "rule of undivided loyalty" as between attorney and client, did the Court below err in deciding that he was entitled to receive compensation for his services, and thus creating an exception to the general rule that in such circumstances an attorney is debarred from any fee whatever?

The Facts

For the determination of the limited issue presented, the petition sets forth the facts sufficiently except for two errors and one important omission. The statement on page 16 "But it is true that the subordinated bondholder did not speak for and was not authorized to speak for the Deficit Series public bondholders" is incorrect. Prudence Realization Corporation, the holder of the subordinated bonds, was likewise holder of unsubordinated bonds, in the same class as the public bondholders, aggregating $16,700 in the Third, Thirteenth and Fifteenth Series, which are "Deficit Series" (R. 672). The subsequent statement, on the same page, referring to the time the Court of Appeals rendered its decision, "Then for the first time the subordinated bondholders undertook to speak for the Deficit Series public bondholders," is likewise contrary to the fact.

There was involved in the "Construction Proceedings" the rights to distributive shares in sums aggregating $1,994,453.79 of collateral in the "Excess Series," A.A., 5th, 6th, 8th, 9th, 12th, 17th and 18th (R. 169). Of these sums the Special Master recommended and the District Court directed that $1,009,866.22 be paid to the subordinate bondholder Prudence Realization Corporation; $173,949.98 to

President and Directors of the Manhattan Co. for its liens in the 5th and 9th Series; and the balance of $810,637.59 to the public bondholders of the "Deficit Series" (R. 665). Prior to the arrival of the amount of excess of $360,610.22 in the Fifth Series the Special Master recommended the restoration of $81,565.14 from the principal to income account and its distribution to the public bondholders, of the Fifth Series. (Prior record 50, 57). Similarly in the Ninth Series, prior to his arrival at the excess of $463,285.24 the Special Master recommended the restoration of $46,631.51 from principal to income account and its distribution to the public bondholders of the Ninth Series (Prior record 547) and Prudence Realization Corporation filed exceptions thereto. (Prior record 88, 552). From the decrees of the District Court overruling such exceptions, Prudence Realization Corporation appealed. (Prior record 78, 557). If Prudence Realization Corporation was successful on its appeals the respective items $81,565.14 and $46,631.51 would have been added to the $810,637.59 claimed to be distributable to the public bondholders of the Deficit Series.

The important fact omitted from the petition herein is that Reconstruction Finance Corporation is a party to and appeared in the "Construction Proceeding". Through its wholly owned or controlled subsidiary corporations, it was the holder of a $1,000 bond in the 4th Series, the same series in which Katherine Born held bonds; $28,500 of bonds in the 11th Series, the same series in which Bessie B. Rielly held bonds; $20,400 in the 3rd series and $109,500 in the 13th Series, (R. 672) each of which was a deficit series.

Position of Respondent Silbiger

Respondent Silbiger on May 18th, 1950, herein filed a petition for a writ to review the decisions and decrees below, docketed as October Term, 1949, No. 829. It is his contention that the review of the decisions below should not

be limited or restricted as prayed by petitioner. The decision of the Court of Appeals, which reversed the finding of the Special Master and the District Court that respondent Silbiger "did not represent conflicting interests" is without warrant in fact or law.

The determination of respondent's right to compensation and its amount was not arrived at in the calm and judicial atmosphere that should pervade a Court of Justice. The trial of the issues deteriorated into a trial of respondent Silbiger's integrity as a member of the bar. The atmosphere was polluted with unwarranted charges of disloyalty and professional misconduct so as to deprive respondent of a fair trial of his just claims on the merits.

Respondent therefore respectfully prays that the petition herein be considered in conjunction with his petition filed May 18th, 1950 and that certiorari be granted to review all issues raised below on the merits.

Dated: May 19th, 1950.

SAMUEL SILBIGER, *pro se.*
Attorney for Respondent.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. [redacted] 52

PROTECTIVE-BONDS CORPORATION (NEW CORPORATION),
Petitioner,

against

SAMUEL SILBERMAN, et al.,

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENT WEIL, GOTSHAL & MANGES, IN OPPOSITION

WEIL, GOTSHAL & MANGES,
Respondent,
30 East 42nd Street,
New York City, N. Y.

FRANK L. WEIL,
EDWARD C. WALLACH,
MILTON HANDLOKER,
of Counsel.

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